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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,670	08/22/2003	Roger M. Snow	PA0887.ap.US	1007

7590 11/24/2004

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EXAMINER
LAYNO, BENJAMIN

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,670	SNOW, ROGER M.	
	Examiner	Art Unit	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 08/30/04 have been fully considered but they are not persuasive. However, the claim 13 contains allowable subject matter.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-3, 5, 23-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Potter et al. The Applicant is referred to the description of Potter in the first Office action.

5. The Applicant has argued that "The game rules of Potter lack the option of playing against both hands in the same game". Applicant continues by arguing that "Potter describes a high-low game, where the player must select one hand among the use of two different sets of rules when selecting the hand against which play will be engaged", and "The recited use of a single set of rules against two different dealer hands is a fundamentally different method of play and is not anticipated by Potter et al. The claims in the present Application recite that a single set of rules be used in the competition against hands".

6. The Examiner takes the position that the claims of the present invention **do not** recite that "**a single set of rules"** be used in the competition against the hands. The Examiner also disagrees with the Applicant's assertion that the game rules of Potter lack the option of playing against both hands in the same game. Potter recites "Each player now must decide which of the bank hands to play their hand against, (the High hand (standard poker,) the Low hand (low ball poker,) or **both hands**,)" col. 4, lines 31-34. Potter continues by reciting "Each player's complete five card hand is now exposed, compared to the specific bank hand the player chose to play against, (High, Low, or **both**,)", col. 4, lines 49-52. These recitations clearly suggest that players in Potter's game do have the option of playing against both hands in the same game.

7. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones et al. Applicant is referred to the description of Jones in the first Office action.

The Examiner disagrees with the Applicant's statement that "Jones does not differentially pay on the bonus wager wherein the dealer qualifies as recited in claim 7. Jones et al. pays on the bonus wager only when the player achieves the ranked hand, and the failure to pay when the dealer hand does not qualify in Caribbean Stud poker.... On the bet wager Jones et al., the dealer pays on ranked hands only when the dealer qualifies". Jones recites "If the dealer's hand has a poker value of Ace-King or better, the dealer compares his hand to each player's hand.....The dealer also pays odds of **more than even money** on each winning player's hand of two pair or better", col. 4, lines 40-44. Jones also recites "if the dealer does not have a poker value of at least Ace-king, then the dealer is not permitted to continue to play. In that case, the dealer

pays **even money** on the remaining player antes, and returns their bets to them", col. 4, lines 35-38.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. The Applicant is referred to the first Office action.

10. Claims 4, 10, 11, 15-19 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Potter et al. as applied to claim 7 above, and further in view of Hedman. The Applicant is referred to the teaching of Hedman in the first Office action.

11. The Applicant has argued that "It does not seem to be possible to combine the Potter and Hedman games in any rational manner to even approach the claimed games of this application" The Applicant's continues by reciting "There is no basis for so drastically altering the play of Potter in view of Hedman". In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner maintains his position that

the reason to combine Potter and Hedman references would have made Potter's game more exciting to play.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter et al. in view of Hedman as applied to claim 10 above, and further in view of Lott. The Applicant is referred to the teaching of Lott in the first Office action.

13. Claims 6, 14, 20, 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter et al. in view of Hedman as applied to claims 1 and 10 above, and further in view of Jones et al. The Applicant is referred to the teaching of Jones et al. in the first Office action.

14. In regard to claims 6, Jones et al. teaches paying the player different amounts depending whether the dealer's hand is below a predetermined qualifying rank (Ace-King) or equal to or above the predetermined rank, col. 4, lines 35-44. Determining exactly what amount to pay to the player is simply a casino business decision that is always obvious in the art.

Allowable Subject Matter

15. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl